

SECOND INTERIM REPORT OF PROFESSIONALISM

("CHARACTER COUNTS") SUBCOMMITTEE

I. INTRODUCTION

Since our report to the Professionalism Commission on May 12, 2004, the Professional Subcommittee has met in person on two occasions and also participated in a telephone conference call in furtherance of our efforts. At the meeting of the Commission on May 12th, we committed to complete several tasks; more specifically:

1. Collation of the results gathered from the Town Hall meetings conducted throughout the State of Maryland;
2. Examination of Codes or Creeds of Professionalism developed in the State of Maryland;
3. Examination of the Codes or Creeds of Professionalism and professionalism criteria developed in other states; and
4. Investigation as to whether any primary data has been developed from juries, etc., as to professionalism of lawyers appearing in our courts.

This Report will update the Commission on the progress of our efforts to date.

II. EXAMINATION OF CODES AND CREEDS OF PROFESSIONALISM IN MARYLAND AND ELSEWHERE

With the assistance of two able law clerks, Kelly McCambridge and Lee Carpenter, the “Character Counts” subcommittee has examined Codes and Creeds of Professionalism and civility developed by the Maryland State Bar Association and by Bar Associations in various counties, including Baltimore County, Baltimore City, Prince George’s County and Montgomery County. In addition, we have examined a representative sample of such codes and creeds developed in other states.

For the benefit of the entire Commission, we have attached hereto as Exhibit A, a memorandum which reflects the results of our research and summarizes material elements of various of the codes, both in the State of Maryland and in other states. We have also attached hereto as Exhibit B a spreadsheet identifying various elements which have been recurrent in the Codes and Creeds of Professionalism in Maryland and elsewhere. The spreadsheet depicts the frequency with which such elements appear in the various codes and creeds. From this, it is clear that there is much overlap and commonality as to the indicia of professionalism here and elsewhere.

Of the various codes and creeds we have examined, our subcommittee is particularly impressed with the Code of the State of Georgia which is complete, well written and aspirational in tone. A copy of the Georgia creed is attached hereto as Exhibit C. Various of the other creeds and codes also contain certain unique descriptions of indicia of professionalism that we thought were very worthwhile. From this research, we have

compiled what I would describe as a “pro forma” Code of Professionalism, a very rough draft of which is attached hereto as Exhibit D.

III. INDICIA OF PROFESSIONALISM FROM THE PUBLIC OUTREACH EFFORTS

One of the tasks we committed to undertake was to examine the Report of the Professionalism Task Force and the results of the town hall community outreach meetings held with the lawyers and judges in each County throughout the State. There was significant overlap in the description of the indicia of professionalism. With the assistance of our interns, we have collated the results, with such collation being attached hereto as Exhibit E.

IV. PRIMARY RESEARCH

At the meeting of the Professionalism Commission on May 12th, we discussed the question as to whether primary field research, such as interviewing judges or juries or personal examination of Court proceedings would be worthwhile. The sense of the Commission on May 12th was that such primary research was not warranted and that significant data had already been compiled through the public outreach efforts referred to above. We did, however, seek to ascertain by inquiries to various counties as to whether exit interviews or surveys are completed so as to determine if there is any community input on the question of the professionalism of lawyers appearing in our courts. Our research on this issue has led us to conclude that there is no useful survey data. There are several counties that now or historically have done jury exit polls, but such polls typically are aimed at determining the level of satisfaction of jurors with the “service” they have received from the Clerk’s offices, etc.

As part of our investigation, we did obtain information from the Josephenson Institute which is the source of the “Character Counts” initiative employed in the public schools in various counties throughout this state and other public bodies. At our meeting in July, we will provide some information to you about this initiative.

V. CONSENSUS POINTS

While our subcommittee is not yet in a position to present final recommendations to the Professionalism Commission, we have reached consensus on a number of recommendations that likely will be contained in our final report. Those consensus items, which warrant discussion of the entire Commission, are as follows:

1. We very much want to ensure that the efforts of the Professionalism Commission do not simply lead to the development of a published code or creed of professionalism which, after being drafted and accepted, finds its way onto a shelf collecting dust.
2. In furtherance of the foregoing, we think it is imperative that the Courts of the State endorse, support and promote whatever code, creed or report of professionalism is developed.
3. In whatever form our code, creed or declaration of professionalism ultimately takes, it is imperative that significant efforts made by the Bar Association, working in conjunction with the Courts, to promote and market the existence of the standards of professionalism that have been developed, including through web pages and other public outreach and marketing efforts not only among the lawyers, but among the citizens of the State of Maryland. It is important, in our view, for

the Courts and the lawyers of this state to declare to the citizens in this State that we have developed such a code or creed to which the lawyers in the State will be adhering.

4. Our subcommittee is very concerned that the professionalism effort not be a one time exercise. We believe it is important for every lawyer in this State to be asked to declare his or her intentions to adhere to the standards of professionalism which will be committed to in writing and which should be ratified and reaffirmed at various intervals (perhaps three or five year intervals). The declaration, executed by the lawyer and containing his or her commitment to adhere to standards of professionalism, should be something that the lawyers are encouraged to post in their offices as a reminder to themselves and to their clients.
5. In addition to marketing, outreach and reaffirmation at certain intervals, our subcommittee believes that there should be some effort, most likely at the local bar level, to promote and encourage adherence to the standards of professionalism on an ongoing basis. Perhaps each local Bar Association could identify a professionalism mentoring group, to include a representative from this Commission, who would receive “complaints” or expressions of concern about activities of members of the Bar and act as “mentors” to encourage bad actors to cease and desist.
6. Our subcommittee very much believes that the professionalism effort should not just begin once someone passes the bar. It should be an

inherent part of the instruction received by prospective future lawyers in law schools. Professionalism training should be required in the curriculum of the law schools in this State which may well be a logical extension of the Character Counts initiative in the system of public education in this State.

VI. CONCLUSION

The efforts of our Subcommittee to identify the indicia of professionalism and develop standards of professionalism for the lawyers and judges in this State is still a work in progress. We very much appreciate the input of the Commission on the consensus items detailed above and welcome any other thoughts that members of the Commission may have regarding the substance of this interim report as we move forward.